

**SOFTWARE LICENSE, IMPLEMENTATION AND SUPPORT AND
MAINTENANCE AGREEMENT**

BETWEEN

N. HARRIS COMPUTER CORPORATION

- and -

SHELBY COUNTY, TENNESSEE

**1 Antares Drive, Suite 400
Ottawa, Ontario
K2E 8C4**

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**SOFTWARE LICENSE, IMPLEMENTATION AND SUPPORT AND MAINTENANCE
AGREEMENT**

THIS AGREEMENT made as of the _____ day of _____, _____.

BETWEEN:

N. HARRIS COMPUTER CORPORATION
("Consultant")

- and -

SHELBY COUNTY, TENNESSEE
("Organization")

RECITALS

1. The Consultant owns the Software (as defined below);
2. The Organization wishes to (a) acquire a license to utilize the Software, (b) retain the Consultant to perform the Services (as defined herein), and (c) enter into a support and maintenance contract (Schedule "D").
3. The Consultant wishes to (a) grant the Organization a license to utilize the Software, and (b) provide the Services to the Organization, all upon the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I
INTERPRETATION

1.1 **Definitions**

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (i) "Agreement", "this Agreement", "the Agreement", "hereof", "herein", "hereto", "hereby", "hereunder" and similar expressions mean this Software License, Implementation and Support and Maintenance Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All

references to **“Articles”** or **“Sections”** mean and refer to the specified Article or Section of this Agreement.

- (ii) **“Change Order”** means any written documentation between the Organization and Consultant evidencing their agreement to change particular aspects of this Agreement.
- (iii) **“Completion of Services”** means that the Software is fully operational and performing in conformity with the specifications set out herein. For purposes of this Agreement, Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominate business system. Software shall not be considered the predominant business system until after the parallel process is completed.
- (iv) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software.
- (v) **“Documentation”** means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Services, whether distributed in print, magnetic, electronic, or video format, in effect as of the date (1) the Software is accepted by the Organization, or (2) the Service is provided to the Organization. Schedule “N” identifies the items of documentation provided by Consultant to Organization.
- (vi) **“Go-Live”** means the event occurring when the Organization first uses the Software as the Organization’s predominant Software.
- (vii) **“Project Scope of Work”** means the scope of work appended hereto as Schedule “E” delineating, among other things, the Services that will be provided by Consultant to Organization pursuant to this Agreement, as such schedule may be amended or modified by mutual specific written agreement of the parties’ respective representatives from time to time in accordance with the terms of this Agreement.
- (viii) **“Required Programs”** has the meaning set out in Section 3.3(ii) hereof.
- (ix) **“Services”** has the meaning set out in Section 3.1 hereof.
- (x) **“Source Code”** of the Software means the Software written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object code for

operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation.

- (xi) **“License”** means the non-exclusive license granted to the Organization pursuant to Section 2.1 hereof, to configure and install the Software on the Organization’s server computers to enable users to access and use the Software.
- (xii) **“Software”** means the program material in machine-readable or interpreted form, and may include, where appropriate, listings of either machine code or source code and related materials, including instructions and documentation provided by Consultant to Organization, including any such programs provided subsequent to this Agreement, and including all copies made by Organization. The Software to be provided by Consultant at the inception of this Agreement is identified on the attached Schedule A.
- (xiii) **“Support and Maintenance Agreement”** has the meaning set out in Section 3.4 hereof.
- (xiv) **“Warranty Period”** means a period of twelve months from the date of Completion of Services, during which time the Consultant shall correct any errors or malfunctions reported to the Consultant by the Organization in accordance with Section 6.3 of this Agreement.
- (xv) **“Right to Audit”** means that the Organization has the right to have an independent contractor audit the software applications to obtain reasonable assurance pertaining to its function and applications should it deem it appropriate to do so.

1.2 Time of the Essence

Time shall be of the essence in and of this Agreement and every part hereof. Any extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

1.3 Currency

Unless otherwise specified, all references to amounts of money in this Agreement refer to U.S. currency.

1.4 **Headings**

The descriptive headings preceding Articles and Sections of this Agreement are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content of such Articles or Sections. The division of this Agreement into Articles and Sections shall not affect the interpretation of this Agreement.

1.5 **Plurals and Gender**

The use of words in the singular or plural, or referring to a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to such persons or circumstances as the context otherwise permits.

1.6 **Schedules**

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “A” -	Description of Software
Schedule “B” -	Implementation Process and Timetable
Schedule “C” -	Fee Structure and Payment Schedule
Schedule “D” -	Support and Maintenance Agreement
Schedule “E” -	Scope of Work – if applicable
Schedule “F” -	Sample Change Order
Schedule “G” -	Consultant response to Organization
Schedule “H” -	System Software
Schedule “I” -	Hardware
Schedule “J” -	Software not selected
Schedule “K” -	Addendum
Schedule “L” -	Modifications and Enhancements
Schedule “M” -	Escrow Agreement
Schedule “N” -	Documentation and Training

1.7 **Right to Audit**

The Organization has the right to audit the software delivered with this Agreement.

ARTICLE II

SOFTWARE LICENSES

2.1 **Grant of Licenses**

Subject to the terms and conditions of this Agreement, the Consultant hereby grants to the Organization a personal, non-exclusive, non-transferable right and license to use the Software on the Designated Computer System (the “License”).

Any Software furnished by Consultant in machine-readable form may be copied in whole or in part by Organization for use on the Designated Computer System. Organization agrees that the original copy of all Software furnished by Consultant and all copies thereof made by Organization are and at all times remain the sole property of Consultant.

Any License granted under this Agreement permits the Organization to: (i) use the Software for its municipal and corporate purposes including, but not limited to, performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software, which training materials may include flow diagrams, system operation schematics, or screen prints from operation of the Software. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality.

Within one (1) year after the date of this Agreement, Organization may optionally license from Consultant any of the Software identified in Schedule J for the corresponding prices listed in Schedule J. After the expiration of the one (1) year period, prices for the Software identified in Schedule J are subject to change in Consultant's sole discretion.

2.2 Term of License

The License granted herein commences upon the full execution of this Agreement and is of indefinite duration unless terminated pursuant to the terms hereof. The Support and Maintenance Agreement, pursuant to Section 3.4 of the Agreement, and as set forth in the attached "Schedule D", shall be renewable for successive one-year periods at the option of the Organization. Organization agrees to notify the Consultant 90 days prior to the cancellation date.

2.3 Restrictions on Use

Except as expressly provided herein, the Organization may not give away, rent, lease or otherwise sell, sublicense, distribute or transfer the License granted under this Agreement without the prior written consent of Consultant.

Organization requires a separate License for each computer system or environment into which the Software or any portion thereof is read in machine-readable form for operation on such system or environment in a production environment. In addition each License permits the Organization to use the Software in (1) a test environment, (2) a training environment and (3) on a back-up or disaster recovery system. Notwithstanding the language above, the parties acknowledge that this License granted herein, is a site license for the use of the Organization only. The Organization has the right to run the software being licensed herein on all its computer systems.

Within thirty (30) days after discontinuance or termination of the License for any reason, including termination resulting from a breach by the Organization beyond the applicable notice and cure periods as provided in this Agreement, Organization shall deliver to Consultant the Software and all copies thereof in whichever form, including partial copies which may have been modified by Organization or Consultant. Alternatively, the Software and other related materials may be disposed in accordance with written instructions from Consultant. Upon prior written authorization from Consultant, Organization may be permitted for a specific period after the termination of the License to retain one copy of certain materials for record purposes.

The Software and related materials supplied by Consultant are protected by copyright and trademark laws. Title, ownership rights and intellectual property rights in the Software and related materials supplied by Consultant remain with Consultant. Use of the Software and related materials supplied by Consultant is subject to the applicable copyright laws and the express rights and restrictions of this Agreement. Any rights not expressly granted herein are reserved. Organization may not remove any copyright, trademark or other proprietary notices from the Software and related materials supplied by Consultant.

2.4 Derivation, Modification and Copyright

- (i) The Organization agrees that it will not attempt to derive, or permit or help others to derive the Source Code relating to the Software or attempt to otherwise convert or alter the Software into human readable code. The Organization further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the Source Code relating to the Software.
- (ii) The Organization shall have no right to modify any of the Software supplied by the Consultant for Organization's use under this Agreement without the prior written approval and direction of the Consultant.
- (iii) The Organization agrees that it will not, except as otherwise expressly provided in this Agreement or except as dictated by Organization's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Software or other proprietary information in any form. The Organization agrees that it will not copy or otherwise reproduce the Software and that any additional copies as are reasonably necessary for the use of the Software shall be provided to the Organization through the issuance of additional Licenses at the Consultant's then current charges.
- (iv) The Organization may duplicate Documentation, at no additional charge, for the Organization's use so long as all required proprietary markings are retained on all duplicated copies.

2.5

Ownership of Software and Confidential Information

- (i) The Organization acknowledges that the Software contains proprietary and confidential information of the Consultant which shall, at all times, remain the property of the Consultant. Through the grant of licenses pursuant to Section 2.1, the Organization is only entitled to use of the Software in accordance with the terms of this Agreement.
- (ii) The Organization will ensure that the Universal Copyright Convention symbol and other copyright and proprietary notices of the Consultant will remain on the Software in machine-readable form. The Organization will take the same care to safeguard the Software as it takes to safeguard its own confidential information and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- (iii) No third party, other than duly authorized agents, employees and representatives of the Organization authorized pursuant to the Licenses issued hereunder, shall have access to or use of the Software.
- (iv) In order to assist the Consultant with the protection of its proprietary rights with respect to the Software and to enable the Consultant to ensure that the Organization is complying with its obligations with respect to the proprietary nature and confidentiality of the Software, the Organization shall permit the Consultant to visit during normal business hours any premises at which the Software is used and shall provide the Consultant with access to such Software. Reasonable notice shall be given by the Consultant to the Organization prior to any such visits.

2.6

Provision of Source Code

- (i) The Organization's ability to utilize the Software will be seriously jeopardized if the Consultant fails to maintain or support such Software unless complete Source Code for the Software and related Documentation is made available to the Organization for the Organization's use in satisfying the Organization's maintenance and support requirements. Therefore, the Consultant agrees that if an "Event of Default" occurs, then the Consultant shall promptly provide to the Organization one copy of the most current version of the Source Code for the affected Software and associated Documentation.
- (ii) An Event of Default shall be deemed to have occurred if the Consultant:
(1) ceases to market or make available maintenance or support Services for the Software during a period in which the Organization is entitled to receive or to purchase, or is receiving or purchasing, such maintenance and support and the Consultant has not promptly cured such failure

despite the Organization's demand that the Consultant make available or perform such maintenance and support, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, (3) ceases business operations generally or (4) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of the Consultant set forth in this Agreement.

- (iii) The Consultant will promptly and continuously update and supplement the Source Code as necessary with all corrections, improvements, updates, releases, or other changes developed for the Software and Documentation. Such Source Code shall be in a form suitable for reproduction and use by computer and photocopy equipment, and shall consist of a full source language statement of the program or programs comprising the Software and available program maintenance Documentation which comprise the pre-coding detail design specifications, and all other available material necessary to allow a reasonably skilled programmer or access the Software without the assistance of the Consultant.
- (iv) The governing License for the Software includes the right to use Source Code received under this Section as necessary to modify, maintain, and update the Software.
- (v) The Consultant will deposit in escrow with its Escrow Agent a copy of the Source Code which corresponds to the most current version of the Software in use by the Organization. The Organization shall pay annual fees of approximately \$750 to the Escrow Agent for services provided, including any fees to add the Organization as a beneficiary to such escrow and any verification and testing of the escrow deposit which may be undertaken by the Escrow Agent at the Organization's request. The Consultant's entry into, or failure to enter into, an agreement with an escrow agent or to deposit the described materials in escrow shall not relieve the Consultant of its obligations to the Organization described in this Section. The Escrow Agreement is identified in Schedule M.
- (vi) If, as a result of an Event of Default, the Consultant fails to provide required support services, then any periodic license fee which the Organization is required to pay under this Agreement for Software shall be reduced to reflect such lack of support services. At such time as the Consultant commences offering the support services described in this Agreement for Software, the Organization may obtain such support Services as provided for elsewhere in this Agreement.

2.7 Ownership and Disposition of Documents

The Organization shall be the exclusive owner of all materials and documents which were developed or prepared by the Consultant specifically for the Organization pursuant to this Agreement. All materials and documents which were developed or prepared by the Consultant for general use and which are not the copyright of any other party or publicly available, including educational materials, the Software and any other computer applications, shall continue to be the property of the Consultant.

ARTICLE III CONSULTING SERVICES

3.1 The Consultant's Services

In order to achieve the Completion of Services, the Consultant agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization:

- (i) Oversee and implement the conversion from the Organization's existing software applications to the Consultant's Software substantially in accordance with the timetable attached hereto as Schedule "B".
- (ii) Install the Software, perform necessary set up and configuration operations, perform initial testing and parallel testing in accordance with the timetable attached hereto as Schedule "B".
- (iii) Provide the training substantially in accordance with the timetable attached hereto as Schedule "B".
 - (a) Consultant recommends a maximum of eight (8) people in each training class for optimal training. In any training class exceeding eight (8) people, Consultant may be assessed an additional charge for additional instructors.
 - (b) Organization is required to make copies of the training manuals required for the training classes either by photocopy or electronic duplication each of which is subject to the restrictions and obligations contained in this Agreement.
 - (c) On-line reference documentation is delivered with each release. Organization may print this documentation solely for its internal use.
 - (d) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Cancellation by Organization with fourteen (14) days or less of scheduled on-site Services will be billed at fifty percent (50%) of the on-site fee, plus any non-

recoverable costs incurred by Consultant due to advance scheduling of travel. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Consultant's then current schedule permits. Consultant is not responsible for any delay in Organization's project resulting from Organization's cancellation of training. If upon Consultant arrival, the Organization is not adequately prepared or has not completed the assigned tasks for such visit by the Consultant, then the Organization will be billed 100% of the on-site fee and scheduled on-site services can be cancelled by the Consultant. If additional services are required because the Organization was not adequately prepared, Consultant will provide a Change Order to the Organization for the additional services.

3.2

Performance by Consultant

- (i) Manner of Performance -- The Consultant shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof.
- (ii) Consultant's Discretion -- The Consultant shall determine in its sole discretion the manner and means by which the Services shall be performed, with due consideration of adequate knowledge transfer to the Organization personnel. The Consultant will communicate openly with the Organization on its methodology, manner and means. Notwithstanding the above, services shall be performed within normal business hours unless otherwise specified by the mutual agreement between the Organization and the Consultant.
- (iii) Conduct on Organization's Premises -- The Services shall be performed with the Organization's full co-operation, on the premises of the Organization or, if agreed to by both parties, at an alternative location. The Consultant agrees, while working on the Organization's premises, to observe the Organization's rules and policies relating to the security thereof, access to or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- (iv) Inquiries by Organization -- The Consultant shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.

3.3

Performance by Organization

- (i) Co-operation by Organization -- The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and

agrees to act reasonably and co-operate fully with the Consultant to achieve the Completion of Services.

- (ii) Required Programs. The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the “Required Programs”), as detailed in the attached Schedule ”A”, and the Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein. The Organization further acknowledges that the operation of the Software requires the Organization’s hardware to be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of Completion of Services. The Consultant acknowledges that the hardware specified in Schedule I is of sufficient quality and condition.
- (iii) Project Manager -- The Organization shall appoint a project manager (the “Project Manager”) who shall work closely with the Consultant to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Organization and their co-operation with and participation in such process.
- (iv) Additional Organization Obligations
 - (a) Organization shall install all corrections and maintenance releases within a reasonable period of time of Organization’s notification of their availability. However, any fix or correction designated as “critical” by Consultant shall be implemented by Organization within thirty (30) days of notification to the Organization by Consultant of its availability.
 - (b) Organization shall notify Consultant of suspected defects in any of the Software supplied by Consultant. Organization shall provide, upon Consultant request, additional data deemed necessary or desirable by Consultant to reproduce the environment in which such defect occurred.
 - (c) Organization shall allow the use of online diagnostics on the Software supplied by Consultant to Organization, if required by Consultant during problem diagnosis. Organization shall provide to Consultant, at Organization’s expense, access to the Designated Computer System via the Organization’s firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).

- (d) Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable Consultant manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Consultant and Organization, Organization agrees that such personnel will be trained by Consultant or Organization within fifteen (15) days of determination. If Organization desires Consultant to perform the required training then Consultant shall be compensated in accordance with this Agreement.
- (e) Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. Organization shall provide Consultant with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- (f) Organization shall have the sole responsibility for:
 - (a) the performance of any tests it deems necessary prior to the use of the Software.
 - (b) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
 - (c) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - (d) timely upgrade and keeping current all third party license releases and/or Software products to meet the requirements of the Consultant Software.

3.4

Support and Maintenance Agreement

Concurrently with the execution and delivery of this Agreement, the Consultant and the Organization have entered into a support and maintenance agreement (the "Support and Maintenance Agreement") in the form of and on the terms set out in the attached Schedule "D" which shall apply in respect of the ongoing services and support to be provided by the Consultant to the Organization following the Completion of Services. Notwithstanding the ongoing application of the Support and Maintenance Agreement, the terms and conditions of this Agreement, insofar as they relate to the Software and the Documentation and the rights and obligations of the parties with respect thereto, shall continue to apply and the Support and Maintenance Agreement is not intended to, nor will it, apply to the exclusion of this Agreement. Consultant shall have no obligation under this Agreement to render any maintenance services or

related services with respect to non-Consultant software, except as contracted for in writing with the Organization. In the event there is a contradiction or inconsistency between this Agreement and Schedule D, this Agreement shall govern.

3.5 **Stages of Services**

For descriptive purposes, this provision is intended to set out the two stages pertaining to the Services and the ongoing support and maintenance of the Software. They are as follows:

- (a) Start to Completion of Services – during this stage, all Services will be performed and the Software will be tested to the reasonable satisfaction of the Organization, until the Organization is prepared to commit to the Software as its predominant business system.
- (b) Support Phase – following the Completion of Services, for so long as a Support and Maintenance Agreement is in effect, the Consultant shall be required to correct any programming defects, errors and malfunctions, and provide the Organization with any updates of, or modifications to, the Software.

For greater certainty, during each of the above phases (subject only to the requirement that an effective Support and Maintenance Agreement is in place during the Support Phase), the Consultant will be required to correct any programming defects, errors and malfunctions which may occur in respect of the Software.

ARTICLE IV **HARDWARE**

4.1 **Hardware**

This Article IV shall only be applicable in the event any hardware listed on Schedule I is to be provided by Consultant.

(i) Organization agrees to purchase from Consultant and Consultant agrees to sell to Organization, the hardware listed on the attached Schedule I (collectively the “Hardware”), for the purchase prices listed in said Schedule. Consultant shall arrange for the delivery of the Hardware, and Organization shall pay for the transportation charges incurred by Consultant in connection with the delivery of the Hardware. Delivery of the Hardware shall be F.O.B. point of destination, provided that Organization shall pay for the shipping charges. All risk of loss and risk of damage to the Hardware will pass to Organization upon delivery to Organization’s specified location.

(ii) Upon delivery of the Hardware to Organization, Consultant shall invoice Organization for the Hardware, and Organization shall pay for the same within thirty (30) days. Consultant hereby reserves a purchase money security interest in all Hardware delivered to Organization in accordance with this Agreement until payment in full is received for all Hardware delivered to Organization, and for that purpose, this Agreement shall be a security agreement. Organization authorizes Consultant or its agent to file the necessary financing statements to perfect Consultant’s interest. Additionally, Consultant may file this Agreement or a copy of this Agreement with such public filing offices as are necessary in Consultant’s

discretion.

(iii) Consultant and/or the Hardware manufacturer(s) will provide Organization with one copy of the then current user documentation for use with the Hardware ordered and the environmental specifications for the equipment, where applicable.

(iv) Except as otherwise provided in this Agreement, Organization shall be responsible for the installation of the Hardware at Organization's location. If Organization desires Consultant to perform any installation not described in this Agreement, Consultant and Organization shall follow the procedures set out in this Agreement.

(v) It is acknowledged by the parties hereto that the Hardware provided by Consultant to Organization pursuant to this Agreement was manufactured and delivered to Consultant by a third party manufacturer and Consultant is reselling it to Organization. As such, Consultant makes no warranties, express or implied, with respect to the Hardware, including, without limitation, their merchantability or fitness for a particular purpose. Any warranty Organization has with respect to the Hardware shall be solely provided by the manufacturer(s). Notwithstanding, except for manufacturer defects, Consultant warrants that the Hardware is capable of implementing the Software Licensed to Organization hereunder.

(vi) The parties agree that although this Agreement may contain estimated prices for the maintenance of the Hardware, Hardware maintenance shall be provided solely by the respective Hardware manufacturer(s) through separate agreements between Organization and the Hardware manufacturer(s). In no event shall Consultant be responsible for such Hardware maintenance.

ARTICLE V

SYSTEM SOFTWARE

5.1 System Software

This Article V shall only be applicable in the event any System Software is listed on Schedule H.

(i) Consultant shall distribute to Organization the System Software which is listed on Schedule H, and Organization shall pay Consultant for the System Software in the amount of the purchase price(s) listed on Schedule H. Upon delivery of the System Software to Organization, Consultant shall invoice Organization for the System Software, and Organization shall pay for the same within thirty (30) days. Delivery of the System Software shall be deemed to have occurred: (i) on the date for which Consultant delivers Hardware to Organization with the System Software installed thereon, F.O.B. point of destination, provided that Organization is shall pay the shipping charges, or (ii) the date on which Consultant installs the System Software on Organization's Hardware. Consultant and/or the System Software manufacturer(s) will provide Organization with one copy of the then current user documentation for use with the System Software.

(ii) Except as otherwise provided in this Agreement, Organization shall be

responsible for the installation of the System Software at Organization's location. If Organization desires Consultant to perform any installation which is not described in this Agreement, Consultant and Organization shall follow the procedures set forth in this Agreement. The initial software installation shall be completed by the Consultant with the Organization as a training initiative. All subsequent releases and updates of the software will be completed by the Organization.

(iii) It is acknowledged by the parties hereto that the System Software provided by Consultant to Organization pursuant to this Agreement was developed and delivered to Consultant by one or more third party software companies and Consultant is distributing, sublicensing and/or reselling it to Organization. As such, Consultant makes no warranties, express or implied, with respect to the System Software, including, without limitation, their merchantability or fitness for a particular purpose except as set forth herein. Any warranty Organization has with respect to the System Software shall be solely provided by the third party software companies except as set forth herein. Additionally, Organization acknowledges that its interest in the System Software may be in the nature of a license or sublicense with one or more of the third party software companies which may: (i) require Organization to enter into one or more separate license agreements with such third party software companies, and/or (ii) place restrictions on Organization's use of the System Software. Notwithstanding, except for third party software companies defects, Consultant warrants that the System Software is capable of implementing the Software Licensed to Organization hereunder. The Consultant acknowledges there are no current substantive restrictions on the third party software as of the commencement of this Agreement.

(iv) The parties agree that although this Agreement may contain estimated prices for the annual maintenance of the System Software, any maintenance of the System Software shall be provided solely by the third party software companies through separate agreements between Organization and such third party software companies. In no event shall Consultant be responsible for such third party System Software maintenance as defined on Schedule O.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

6.1 Warranty of Performance

Consultant warrants to Organization that the software, material and services to be provided and/or rendered will be of the kind and quality referred to in the Consultant manuals and other documentation provided. Organization's sole recourse in the event the Software does not conform to the applicable documentation is the repair and replacement of the Software except as may otherwise provided herein. The Consultant warrants to the Organization that the Software will perform as described if the Software is properly used in accordance with the Consultant's instructions. This warranty is void if the Organization or any other third party

changes or modifies the Software. Examples of such changes or modifications include, but are not limited to, data modifications from third party software, the de-compiling and modifying of the source code, and tampering with the base set-up of the system.

6.2 Intellectual Property Rights

The Consultant warrants:

- (i) that it has the full right, authority and power to enter into this Agreement and to grant to the Organization the Licenses and rights conveyed by this Agreement; and
- (ii) that the Software is an original work of authorship and does not infringe the intellectual property rights of others.

6.3 Corrections

The Consultant covenants that it will make corrections of program malfunctions which are reported in writing to the Consultant during the Warranty Period and which are necessary for the Software to conform to this Agreement. The Organization agrees to allow the Consultant the opportunity to make repeated efforts within a reasonable time to correct programming errors or malfunctions as warranted in this Agreement. Consultant agrees that program malfunctions that result in an inoperable system resulting in a financial impact to the Organization, or inefficient work-around, will be given its highest priority with the problem corrected as soon as practicably possible using its most experienced and knowledgeable resources. The Consultant will strive to have any and all malfunctions resolved within no more than two days.

Additional Warranties

(a). **System Software.** Consultant warrants that System Software will perform free of defects in all material respects so long as such System Software is operated in accordance with its written specifications and written instructions provided to Organization, with approved hardware and with third-party products approved by Consultant for use with the System Software.

(b). **Third-Party Products.** The warranties in Sections VI do not apply to any Third-Party Products, except that:

- (i) To the extent permitted by the manufacturers of Third-Party Products, Consultant shall pass through to the Organization all warranties such manufacturers make to Consultant regarding the operation of such Third-Party Products.
- (ii) Consultant warrants that all components of the System Software will interface and function properly with the Third-Party Products

so long as such Third-Party Products operate in compliance with all applicable manufacturers' warranties.

- (iii) Consultant warrants that regardless of any Third Party Products warranty, the System delivered to Organization, including the Third Party Products will perform in accordance with the written statements, representations and/or specifications provided to Organization and the Consultant's representations and warranties expressly set forth in this Agreement.
- (iv) Consultant warrants that each component of the System Software and Third Party products provided to the Organization hereunder will be fit for the particular purpose of providing the Organization with a Financial Management Software System and a Human Resources Software System to assist the Organization in its daily duties and functions of running their specific daily business.
- (v) Consultant warrants that all products and components purchased under this Agreement will be new and that all products and components will be free from material defects and defects in workmanship.
- (vi) Consultant warrants the System Software and every individual component will be, and will operate in all material respects in accordance with the statements and representations and/or warranties included in Schedule E any of the documentation identified in Schedule N .
- (g) Consultant is a corporation duly organized, validly existing, and in good standing under the laws of its domicile. Consultant has all requisite corporate power and authority to own, operate, and dispose of its property.
- (vii) Consultant has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement and the obligations contemplated hereby have been duly and validly authorized by all necessary action on part of Consultant , and this Agreement constitutes a legal, valid and binding obligation of Consultant, enforceable in accordance with its terms. The persons executing this Agreement on behalf of Consultant have actual authority to bind Consultant.
- (viii) No Third Party act, other than those required by Harris partnership (Questica Software) is required to enable Consultant to enter into this Agreement or to perform it, or if so, such consent has been

revealed in writing to Organization and will be obtained before time of Consultant's performance.

- (ix) Consultant has either by itself or with the assistance it reasonably expects to receive from subcontractors, the facilities, equipment, authorizations, and know-how to perform this Agreement.
- (x) There is no pending or known potential claim, planned action or other event of any nature that could individually or together materially impair Consultant's ability to perform this Agreement. Without limiting the generality of this representation, Consultant is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not presently contemplate filing any bankruptcy petition, and is not aware that any person plans to file an involuntary petition in bankruptcy against it, or if aware of such petition, represents that such a petition will not materially affect its ability to timely carry out its duties, responsibilities and obligations under this Agreement.
- (xi) Consultant warrants that, no part of the System Software contains or will contain any code designed to disable a computer program automatically with the passage of time. Furthermore, so long as Organization is not in breach of its License obligations hereunder, Consultant has been notified in writing of the breach, and **Organization** has the opportunity to cure the breach in accordance with the provisions herein, Consultant or licensor will not intentionally disable or interrupt a software program licensed to Organization. This does not include software routines designed to permit access to a licensee's computer system for purposes of maintenance or technical support, provided Consultant has given written notice and description of the attributes of such code to Organization and has Organization's written acquiescence.
- (xii) Consultant warrants to its knowledge, no part of the System Software contains or will contain any virus, Trojan horse, worm or similar software routines.

6.4 No Other Warranties

(a)The express warranties contained above are in lieu of all other representations, warranties and conditions, express or implied, whether arising by statute or otherwise in law or from a course of dealing, or usage of trade. Without limiting the generality of the foregoing, the Consultant does not represent or warrant and the Organization acknowledges that there are no further representations or warranties other than as may be set forth in this Agreement including

those documents provided by Consultant to Organization as identified at Exhibit N and by the Support and Maintenance Agreement :

- (i) that the functions contained in the Software will operate in the combinations which may be selected for use by the Organization or will meet the Organization's requirements and satisfy its intended results; or
- (ii) that the operation of the Software will be error free or that:
 - (a) any programming errors will be corrected after the Warranty Period, or
 - (b) any updates of, or modifications to, the Software will be made available to the Organization after the Warranty Period, in each case unless there is an effective Support and Maintenance Agreement in place after the Warranty Period in respect of the period of time during which any such programming errors require correction, or any updates of, or modifications to, the Software, are developed by the Consultant and made available to the other licensees of the Software.

(a) Notwithstanding the above section 6.5 (a), no provision of this section 6.5 is intended to negate , waive or release any written representation or statement made by Consultant in any writing provided by Consultant to Organization as identified or set forth at Schedules G and N hereto.

ARTICLE VII

FEES AND PAYMENTS

7.1 Fees and Payments

- (i) The Organization agrees to pay the Consultant total fees of ONE MILLION TWENTY SEVEN THOUSAND TWO HUNDRED AND TWO DOLLARS AND 00/100 DOLLARS (\$1,027,202.00). The fee structure and payment schedule is outlined in the attached Schedule "C".

- (ii) During the term of this Agreement, Consultant shall deliver monthly invoices to Organization. Each invoice delivered to Organization by Consultant shall be due and payable within forty five (45) days of receipt thereof by Organization.
- (iii) The Organization shall reimburse Consultant for its direct expenses, in an amount not to exceed an additional TWENTY SIX THOUSAND AND 00/100 DOLLARS, as outlined in the attached Schedule "C". All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.
- (iv) In addition to all other amounts payable under this Agreement, to the extent escrow fees are charged by the Escrow Agent to the Consultant on a per licensee basis or are otherwise charged in such a manner so as to be reasonably allocable to the Organization, the Organization shall pay such fees charged by the Escrow Agent for performing its obligations under Section 2.6. The Consultant shall use its commercially reasonable efforts to negotiate the best possible fee structure with the Escrow Agent. The Escrow Agent may charge a one-time annual fee or a fee based on the number of beneficiaries entitled to access the Source. In either case, the Consultant shall be entitled to pass on to the Organization any fees relating to the Escrow Agent reasonably attributable to the Organization, provided that the Organization remains entitled to access the Source pursuant to Section 2.6. Upon receiving any invoice from the Escrow Agent that requires payment by the Organization, the Consultant shall submit the relevant invoice to the Organization, together with background documentation confirming the amount attributable to the Organization. Within 45 days following receipt of such invoice, the Organization shall reimburse the Consultant for the amounts attributable to the Organization, as more particularly set out in the documentation submitted by the Consultant. The Consultant reserves the right to change the Escrow Agent from time to time in order to obtain the most appropriate package of fees and services, as determined by the Consultant, in its sole discretion. In the event that the Escrow Agent is replaced, prompt written notice of such replacement shall be provided to the Organization and the Organization shall execute any documentation reasonably required by the Escrow Agent in order to give effect to the provisions of this Agreement.
- (v) In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Consultant has under this Agreement or otherwise, Consultant shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services

shall not relieve the Organization of its obligation to pay its outstanding invoices, including all services rendered to the suspension or termination date that were not previously invoiced.

- (vi) Consultant shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations.

7.2 Change Orders

With respect to any proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of the Consultant applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample change order is presented in Schedule "F". Consultant acknowledges and agrees that Organization's approval of said Change Orders may require approval of the Shelby County Government Board of Commissioners, and that said approval process shall not be deemed as being "unreasonably withheld" for the purposes contained herein.

ARTICLE VIII REMEDIES AND LIABILITY

8.1 Remedies and Liability

- (i) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (ii) The Organization and the Consultant recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of the Consultant arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and the Consultant's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

(iii) The Organization, being a political subdivision of the State of Tennessee is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, section 29-20-101 et seq., for causes sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies government immunity without the authorization of the General Assembly.

(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR (a) THE CONSULTANT'S INDEMNITY OBLIGATIONS HEREUNDER, (b) THE CONSULTANT'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR (c) DEATH, PERSONAL INJURY, OR DAMAGES ARISING OUT OF THE CONSULTANT'S MISREPRESENTATION, NEGLIGENCE OR WILLFUL MISCONDUCT, CONSULTANT'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, OR LOSSES SHALL BE LIMITED TO **\$970,281.50**.

8.2 **Intent**

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

ARTICLE IX **INDEMNITY**

9.1 **Indemnity**

SUBJECT TO AND TO THE EXTENT THAT SUCH IS PERMITTED BY ALL APPLICABLE LAWS, THE ORGANIZATION SHALL INDEMNIFY AND SAVE HARMLESS THE CONSULTANT, ITS SUCCESSORS AND ASSIGNS TOGETHER WITH ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND THOSE FOR WHOM IT IS IN LAW RESPONSIBLE, ONLY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, CLAIMS, SUITS, PROCEEDINGS AND JUDGMENTS (COLLECTIVELY "CLAIMS") WHICH THEY MAY INCUR OR SUFFER OR BE PUT TO BY REASON OF OR IN CONNECTION WITH OR ARISING FROM ANY BREACH, VIOLATION OR NON-PERFORMANCE BY THE ORGANIZATION OF ANY OBLIGATION CONTAINED IN THIS AGREEMENT TO BE OBSERVED OR PERFORMED BY THE ORGANIZATION, OR ANY WRONGFUL ACT OR NEGLIGENCE OF THE

ORGANIZATION OR ITS AGENTS OR EMPLOYEES WHICH RELATES TO THIS AGREEMENT, HOWSOEVER ARISING. THE ORGANIZATION ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS INDEMNITY SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

1. The parties recognize that the Organization is a governmental entity as defined by Tennessee Code Annotated Section 29-20-101 et seq. and is self-insured for acts of negligence of its officers and employees. The Organization's liability shall be limited to the provisions of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101 et seq., for causes sounding in tort, and shall not be responsible for any personal injury, property damage or other loss resulting from the Consultant's own negligence in the performance of this Agreement.
2. The Consultant shall immediately notify the Organization of any claim or suit made or filed against the Consultant or its subcontractors regarding any matter resulting from or relating to the Consultant's obligations under this Agreement and will cooperate, assist and consult with the Organization in defense or investigation thereof.
3. If notified in writing of any action brought against Organization alleging that Organization's use of the System Software infringes a United States patent, copyright or trademark, Consultant will defend the Claim at its expense and pay any costs and damages awarded against Organization; provided that Consultant has sole control of and Organization's reasonable cooperation in the defense or settlement of the Claim. This indemnity will not apply to Claims arising from use of the System Software outside the scope of the License granted to Organization, use of the System Software in combination with Third-Party Products (other than those approved by Consultant) or modification of the System Software not performed or provided by Consultant to the extent such use, combination or modification is the cause of such Claim.
4. If a Claim results in an injunction against Organization's use of any component of System Software, or if reasonably anticipates such an injunction, Consultant will procure for Organization the right to continue using the component, replace the component or modify the component to avoid the Claim while retaining substantially the same functionality.
5. Consultant shall indemnify, defend, (with council mutually acceptable to the Organization and the Consultant) save and hold harmless the Organization, and its elected officials, officers, employees, agents, assigns and instrumentalities from and against any and all claims, liability losses or damages related to Title VII and 42 USC 1983 prohibited acts arising

out of or resulting from the actions or omissions directly attributable to Consultant in its performance under this Agreement. This indemnification shall survive the termination or conclusion of this Agreement.

6. Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Consultant shall in no way limit the responsibility to indemnify, defend, save and hold harmless the Organization as herein provided.
7. Organization has no obligation to provide legal counsel or defense to Consultant or its subcontractors in the event a suit, claim or action of any character not caused by or resulting from the negligence or the intentional act of the Organization which is brought by any person not a party to this Agreement against Consultant as a result of or relating to performance of the services or obligations under this Agreement.

8. Consultant will assume all risk of injuries to property or persons, including death resulting or arising from Consultant's negligence, wilful and/or intentional misconduct. Consultant does hereby agree to protect indemnify, defend (with council mutually acceptable to the Organization and Consultant), hold harmless the Organization its employees, officers, elected officials and agents , participating jurisdictions, and agencies against any and all such actions, claims, demands or liabilities for death, personal injury or property damage, (resulting directly from the Consultants negligence or wilful misconduct). The parties acknowledge that the Consultant shall have the opportunity to defend such claims with council acceptable to both the Consultant and Organization.
9. The Organization its employees , officers, elected officials and agents shall not be liable to Consultant for any consequential , incidental or special damages resulting directly from the Consultant's negligence, wilful and/or intentional misconduct.

ARTICLE X GENERAL

10.1 Force Majeure

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the Organization's computer (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Software. Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

10.2 Confidentiality

- (i) Duty Owed to the Organization -- The Consultant acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement or the performance of the Services. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, the Consultant agrees:
 - (a) to maintain this information in confidence;
 - (b) not to use this information other than in the course of this Agreement;
 - (c) not to disclose or release such information except on a need-to-know only basis;

- (d) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of the Consultant; and
 - (e) to take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with the Consultant, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- (ii) Duty Owed to the Consultant -- The parties agree that if the Organization shall breach any term of Section 2.5 of this Agreement entitled “Ownership of Software and Confidential Information”, then the Consultant shall have the right to terminate this Agreement and the grant of licenses herein in accordance with and as set forth in Section 10.3(b).

10.3 Termination

- (i) If the Consultant should neglect to perform the Services properly or otherwise fail to comply with the requirements of this Agreement, the Organization must notify the Consultant in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, the Consultant must either correct the default at no additional cost to the Organization, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the Consultant fails to correct the default, or issue a notice disputing the alleged default, in either case within thirty (30) days following receipt of the Default Notice, the Organization may terminate the part of this Agreement relating to the provision of Services and in such case will be responsible for payment to the Consultant of only that part of the fee earned by the Consultant for those Services performed up to the time of communication of such notice of termination to the Consultant.
- (ii) If the Organization should fail to comply with its obligations under this Agreement, the Consultant must notify the Organization in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, the Organization must correct the default at no additional cost to the Consultant, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the Organization fails to correct the default, or fails to issue a notice disputing the alleged default, in either case within thirty (30) days following receipt of the Default Notice, the

Consultant terminate the whole of this Agreement including the grant of license to the Software and in such case the Organization will be responsible for payment to the Consultant of only that part of the fee earned by the Consultant for that part of the Services performed in accordance with this Agreement up to the time of communication of such notice of termination to the Organization. Should the Organization issue a notice disputing the alleged default within 30 days immediately following receipt of the Default Notice, the Consultant shall cause the matter to go to mediation as set forth herein should it desire to terminate this Agreement including grant of license to the Software or otherwise declare the Organization to be in default of this Agreement.

10.4 Procedure on Termination

If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall return the Software to the Consultant and shall certify, under the hand of a duly authorized officer of the Organization, that all copies of the Software or any part thereof, in any form, within the possession or control of the Organization have been returned to the Consultant. If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services but it shall not be entitled to any additional Licenses, nor will it receive updates of, or modifications to, the Software made by the Consultant. Finally, it will not be entitled to access the Source through exercise of the license granted pursuant to Section 2.6 of this Agreement. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality.

10.5 Mediation

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted in Memphis , Shelby County , Tennessee by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

10.6 Accounts and Records

The Consultant shall:

- (i) keep proper and detailed accounts in accordance with accepted accounting practices of all factors entering into the computation of the amounts payable pursuant to this Agreement; and
- (ii) for a period of three years from the date of Completion of Services by the Consultant, preserve all accounts and other documentation relating to the Organization and keep them available for inspection by the Organization or its representative, at any time. The Consultant agrees that this obligation shall survive any termination of this Agreement.

10.7 Addresses for Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of the Consultant, to:

N. HARRIS COMPUTER CORPORATION
1 Antares Drive, Suite 400
Ottawa, Ontario K2E 8C4
Attention: Executive Vice President
Telephone: 613-226-5511, extension 2152

and in the case of the Organization, to:

SHELBY COUNTY, TENNESSEE
160 N. Main, Suite 1150
Finance Department
Memphis, TN 38103
Attention: Audrey Tipton, Controller
Telephone: (901) 545-4428

with copy to:
Shelby County Tennessee
160 North Main, Ste. 550
Contracts Administration
Memphis, TN 38016

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 10.7.

10.8 Assignment

Neither Party may assign any of its rights or duties under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, except that either Party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and permitted assigns.

10.9 Reorganizations

The Organization acknowledges that the License fee set out in this Agreement has been established on the basis of the structure of the Organization at the date of this Agreement. To the extent that the Organization amalgamates, consolidates or undergoes any similar form of corporate reorganization or transition (a “Reorganization”), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to support the system, the Consultant shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 10.9 shall apply *mutatis mutandis* to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 10.9 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already purchased a License from the Consultant. For purposes of this Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 10.8 will apply, or a Re-organization, in which case Section 10.9 will apply, but it is not intended that Sections 10.8 and 10.9 will apply to any single sequence of events, if such application would result in a duplication of the fees provided for in those provisions.

10.10 Binding Agreement and Enurement

This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

10.11 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Consultant by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Organization acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

10.12 **Section Headings**

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

10.13 **Independent Contractor**

Organization engages Consultant under this Agreement solely as an independent contractor to perform Consultant duties which are described in this Agreement. Organization and Consultant expressly acknowledge and agree that Consultant is the independent contractor of Organization and nothing contained in this Agreement or which otherwise exists shall be construed by Organization, Consultant or any third person or entity to create a relationship of joint venturers, partners, or employer and employee.

10.14 **Governing Law**

This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the Consultant agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

10.15 **Trial by Jury**

Organization and Consultant hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of Consultant in connection therewith or contemplated thereby.

10.16 **Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

10.17 **Waiver**

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such forbearance or notice.

10.18 Counterparts

This Agreement may be executed in counterparts (whether by facsimile signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

10.19 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

10.20 Insurance Requirements

- a. The CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONTRACTOR's operations under the Agreement, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to the Organization of cancellation in coverage provided. The CONTRACTOR will maintain throughout the life of this Agreement insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:
 - i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims made.
 - ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 general aggregate coverage, \$2,000,000.00 annual aggregate products/completed operations, indicating whether coverage provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:
 - a. Premises/Operation;
 - b. XCU coverage, where applicable;
 - c. Products/Completed Operations;
 - d. Contractual Liability;
 - e. Independent Contractors;
 - f. Broad Form Property Coverage;

- g. Personal Injury.
 - iii) Workers Compensation and Employers' Liability Insurance – Workers' compensation statutory limits as required by Tennessee. This policy should include Employers' Liability coverage for \$1,000,000.00 per accident.
 - iv) Business Automobile Liability Insurance - minimum limit of \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased, hired and non-owned autos.
- c. CONTRACTOR shall provide Organization with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:
- Shelby County Government
Purchasing Department
160 N. Main, Suite 550
Memphis, TN 38103
- d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to the County.

10.21 **General Provisions**

- a. **Conflict Of Interest.** The Consultant warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the Organization as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Consultant in connection with any work contemplated or performed relative to this Agreement.

- b. **Covenant Against Contingent Fees.** The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Organization will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

- c. **Employment Of County Workers.** The Consultant will not engage, on a full or part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the Organization.

10.22 **General Compliance with Laws**

- a. If required, the Consultant certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

- b. The Consultant is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the American with Disabilities Act (ADA).

- c. **Nondiscrimination.** The Consultant hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Consultant on the

grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Consultant shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

- d. **Subject to Funding.** This Agreement is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Agreement are not appropriated by the Shelby County Government for any of its fiscal period during the term hereof, then this Agreement will be terminated. In the event of such termination, the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.
- e. **Contracting With Small And Minority Firms And Women's Business Enterprise.** The Consultant shall take affirmative action to assure that Small and Minority Businesses are utilized when possible as sources of supplies, equipment, construction and services and will in addition take similar appropriate affirmative action in support of Women's Business Enterprises. The Consultant does not normally use third parties to deliver any of the services with in this contract with the exception of Harris partners such as the Questica Budget Management Software which is included in this contract.
- f. **No Waiver Of Proprietary Interest.** Notwithstanding anything to the contrary contained herein or within any other document supplied to Organization by the Consultant , the Consultant understands and acknowledges that Organization is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to Organization by the Consultant due to services performed pursuant to this Agreement is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee. The Organization will notify the Consultant of any such release.
- g. **Compliance With Civil Rights Act.** Consultant hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws, which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of Consultant on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee shall upon request show proof of such non-

discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

- h. **Most Favored Pricing.** Consultant agrees that all System Software, post Warranty Period and/or post Agreement termination fees, prices and charges for software licensing, equipment repair and maintenance, and equipment repair and maintenance programs, substitution or replacement of equipment and software and the like offered, imposed or charged to Organization shall not exceed those offered or imposed or performed with respect to substantially similar services or products sold to other Customers of Consultant, under substantial similar terms, substantial similar conditions, substantial similar quantities, and substantially similar configuration.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement
on the day and year first written above.

N. HARRIS COMPUTER CORPORATION

Per: _____

Name: Craig Ross

Title: Executive Vice President

SHELBY COUNTY, TENNESSEE

Per: _____

Name: A C Wharton, Jr.

Title: Mayor

Per: _____

Name:

Title:

Schedule "A"
Description of Software

(page 1 of 2)

GEMS Application Software	License Fee	Annual Support
Financial Management System		
Accounting Applications:	102,350	29,681
Reporting & Security		
General Ledger		
Accounts Payable		
Cash Receipts		
Grant & Project Administration		
Budget Management		
Accounts Receivable	9,488	2,752
Purchasing Management	37,950	11,006
Bid Administration (Purchasing Required)	5,180	4,402
Fixed Assets	25,300	7,337
CAFR Reporting	18,975	5,503
	<u>\$ 199,243</u>	<u>\$ 60,681</u>
Human Resource Management System		
Human Resources & Payroll	102,350	29,681
Reporting & Security		
Risk Management		
Certification Management		
Applicant Tracking		
Employee Self-Service	23,000	6,670
	<u>\$ 125,350</u>	<u>\$ 36,351</u>
Application Utilities		
Screen Designer	5,750	1,150
e-Forms	23,000	4,600
	<u>\$ 28,750</u>	<u>\$ 5,750</u>
Questica Budgeting Solution		
TeamBudget Suite	114,000	30,000
	<u>\$ 114,000</u>	<u>\$ 30,000</u>
Software for Life Discount	(149,816)	-
Qustica Discount	(10,000)	
TOTAL	<u>\$ 307,527</u>	<u>\$ 132,782</u>

Schedule "A"

(page 2 of 2)

Recommended Server Configuration: Application Server

Operating System	Microsoft Windows 2003
Database	Oracle 9.2.0 or SQL Server 2000 Standard or Enterprise Edition
Network/ Telecommunications	GEMS applications use standard TCP/IP network protocol to communicate between the workstations and the server. If remote connections are required, GEMS suggests using a secured connection to the LAN in which the application server resides (e.g. VPN, RAS, etc.).
System Engine	Unisys e-@ction Enterprise Application Bundled Runtime for NT / 2000
Web Connectivity	Unisys e-@ction Enterprise Application Component Enabler
System Front End	Microsoft Internet Explorer 6.0 or higher
Remote Management	HarrisComputer.WebEx.com

User Workstations

Operating System	Windows 2000 Professional, XP or Windows 2003
Browser	Internet Explorer 6.0 or higher

Client Software

Browser Interface	Internet Explorer 6.0 or higher
SkyView	Oracle or Microsoft ODBC Drivers

Note: All cables included are per the manufacturer's specifications and recommendations. Any additional cables required beyond the manufacturer's specifications will be the client's responsibility.

Recommended Server Configuration for: Citizen Payment Portal (CPP) Employee Self Service Portal (ESSP)

Supporting Software*	SoftArtisan SMTP Secure Socket Layer Certificate (SSL) PayFlowPro from VeriSign
Database	SQL Server 2000 (per processor license)
Supporting Software	FTP Service Adobe Distiller

Notes:

Mail server must support SMTP

CPP/VeriSign will require a contract with a Merchant Bank

Schedule “B”

Implementation Process and Timetable

(page 1 of 3)

Harris Implementation Process Overview

Harris uses a systematic approach to control and ensure a successful implementation of your newly purchased software solution. The process can be summarized easily into the following 12 steps:

1. Project Kick-off
2. NT/EAR Administration & Operations Training
3. System Staging
4. Remote Hardware Set Up Assistance
5. Business Process Review(s)
6. Conversion Planning Session
7. Application Set Up Training
8. Data Conversion
9. Process Training
10. Parallel
11. Live User Assistance
12. Application Usage Assessment (Optional)

Schedule "B"

Timetable

(page 2 of 3)

GEMS Application Software	Business Process Review		Implementation Training and Services	
	Hours	Cost	Days	Cost
Financial Management System				
Accounting Applications:	-	-	12	13,920
Reporting & Security				
General Ledger				
Accounts Payable				
Cash Receipts				
Grant & Project Administration				
Budget Management				
Accounts Receivable	-	-	2	2,320
Purchasing Management	-	-	8	9,280
Bid Administration (Purchasing Required)	-	-	1	1,160
Fixed Assets	-	-	4	4,640
CAFR Reporting	-	-	5	5,800
	0	\$ -	32	\$ 37,120
Human Resource Management System				
Human Resources & Payroll	-	-	15	17,400
Reporting & Security				
Risk Management				
Certification Management				
Applicant Tracking				
Employee Self-Service	4	560	2	2,320
	4	\$ 560	17	\$ 19,720
Application Utilities				
Screen Designer	-	-	1	1,160
e-Forms	10	1,400	4	4,640
	10	\$ 1,400	5	\$ 5,800
Questica Budgeting Solution				
TeamBudget Suite	-		30	36,000
	-	-	30	\$ 36,000
TOTAL	14	\$ 1,960	84	\$ 98,640

Schedule "B"

Timetable
(page 3 of 3)

GEMS Professional Services			Hours	Cost
SELECTED PROFESSIONAL SERVICES				
Project Management	600	\$		87,000
Data Conversion	280	\$		40,600
25% Conversion Discount	(70)			(\$10,150)
Total Conversion	210			30,450
Staging and Technical Implementation Services		\$		12,140
Estimated Modification Allowance - (Subject to Change based on decisions made by Shelby County)	1,296.50	\$		181,510

Schedule “C”

Fee Structure and Payment Schedule

Note: *Fees for Services listed below are based on best estimates of the number of hours of work required to complete the Services outlined on Schedule “B” to this Agreement. Accordingly, the total of such fees will increase or decrease as the number of actual hours worked is greater than or less than such estimates.*

Payment Schedule:

A. License Fees: Total \$307,527

1. On execution of this Agreement: (50% of license fee).....\$153,763
2. On completion of Set-up and Installation:(25% of license fee)\$76,882
3. Upon completion of service: (25% of license fee).....\$76,882

B. Service Fees:.....\$411,700

C. Travel and other expenses.....\$26,000

B and C will be invoiced monthly on the basis of actual hours of work and costs incurred to the completion of the project not to exceed the amounts shown.

D. System Software:(100% due within 45 days of receipt of invoice).....\$142,134

Total Project Cost **\$887,361**

E. Annual Support and Maintenance Fee: Total \$165,841

- | | | |
|----|--|-----------|
| 1. | Harris Annual Support and Maintenance..... | \$132,782 |
|----|--|-----------|

First Year Annual Support and Maintenance will be billed at 50% on the commencement of this agreement and is due within 90 days of receipt of invoice. The 50% rate shall stay in effect until the Organization commences using the software as its predominant business system. All subsequent years will be billed at 100% of the Annual Support and Maintenance and will be due on the anniversary of this agreement and is as agreed herein.

- | | | |
|----|---|----------|
| 2. | System Software Annual Maintenance..... | \$33,059 |
|----|---|----------|

Maintenance and Support.....	<u>\$165,841</u>
-------------------------------------	-------------------------

Maintenance and Support Year 2.....	\$170,816
-------------------------------------	-----------

Maintenance and Support Year 3.....	\$177,649
-------------------------------------	-----------

Maintenance and Support Year 4.....	\$186,531
-------------------------------------	-----------

Maintenance and Support Year 5.....	\$195,858
-------------------------------------	-----------

Schedule “D”

Support and Maintenance Agreement

This support and maintenance agreement (the “Support and Maintenance Agreement”) between Consultant and Organization becomes effective ninety (90) days from the date of signing of the Software License, Implementation and Support and Maintenance Agreement or the date which represents the Completion of Services.

Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License, Implementation and Support and Maintenance Agreement.

1. Subject to the terms and conditions of this Support and Maintenance Agreement, Consultant shall provide support and maintenance services which include revisions, updates and enhancements to the Software and related materials under the Agreement.
2. Subject to the terms and conditions of this Support and Maintenance Agreement, Consultant shall provide software support via telephone and electronic mail, and site visits when necessary consistent with the hours of operation, all as described in Exhibit 1 hereto and in effect as of the date hereof, as such services may, at the discretion of Consultant, be modified or supplemented from time to time (provided that any changes generally apply to all licensees of Consultant). To enable Consultant to provide effective support, the Organization will establish auto remote access based on remote access procedures compatible with Consultant’s practices. For emergency situations occurring on Consultant’s observed holidays, Consultant will be available to the Organization by pager number and electronic mail to provide support.
3. In consideration for the support services specified in Section 2, Organization shall pay the Annual Support and Maintenance Fee for the Harris Software Modules of \$132,782 and the Annual Support and Maintenance Fee for the System Software of \$33,059. However, said payment is subject to the support and maintenance fee structure arrangement outlined in Schedule “C”. The Annual Support and Maintenance Fee will be billed annually in advance beginning on the anniversary of the Support and Maintenance Agreement or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee to its fiscal year or any other period it may request, in the initial year, that the Consultant issue a prorated invoice for the portion of the year remaining in said initial year. Consultant may change the Annual Support and Maintenance Fee from time to time. In addition to the Annual Support and Maintenance Fee, Organization shall reimburse Consultant for its direct expenses in providing support services pursuant to this Agreement, including, but not limited to:

courier services, photocopying, faxing and reproduction services, all reasonable travel costs, including a travel time. Any reimbursement for the incidentals listed above shall be in accordance with Shelby County’s reimbursement policies. Any direct expenses related to travel within this section shall be in accordance with the Shelby County Travel policy.

4. All support services provided by Consultant to Organization other than those specified in Section 2 (such as, but not limited to, on-site support), shall be provided to Organization by Consultant at Consultant's then prevailing prices, hourly rates, policies and terms. For certainty, any updates of, or enhancements to, the Software will be made available to Organization free of charge (with respect to the actual updates or enhancements), but all services provided by Consultant with respect to such updates or enhancements will be subject to the Consultant's then-prevailing prices, hourly rates, policies and terms, meaning that such then-prevailing prices will apply to matters such as set-up and training relating to such updates or enhancements.
5. All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs or other governmental charges.
6. The initial term of this Agreement shall be for one year beginning on the date determined in the opening paragraph of this Schedule D. The Agreement shall continue thereafter on an annual basis provided that Organization shall pay the then prevailing Annual Support and Maintenance Fee, unless terminated by either party upon giving to the other not less than 90 days notice in writing prior to the end of the first year or any subsequent anniversary of such date. If the Support and Maintenance Agreement is terminated by Organization, it shall be entitled to retain the Software licensed to it as at the date of such termination, but it will relinquish its rights to receive upgrades of, or enhancements to, the Software, services for the Software, or access to the Source in escrow upon the occurrence of any event specified in Section 2.6(d) of the Agreement. For certainty, and without mitigating the application of the Agreement during the term of this Support and Maintenance Agreement, the terms and conditions of the Agreement relating to the license of the Software and the Documentation and the rights and obligations of the parties with respect thereto will continue to apply to Organization following the termination of this Agreement.
7. Title to and ownership of all proprietary rights in the Software and all related proprietary information shall at all times remain with Consultant, and Organization shall acquire no proprietary rights by virtue hereof.
8. Unless terminated pursuant to Paragraph 6 hereof, this Support and Maintenance Agreement shall remain in full force and effect except as terminated as follows:
 - (a) If either party neglects or fails to perform, observe or cure within ninety (90) days of written notice of such failure to perform any of its existing or future obligations.
 - (b) If Organization attempts to assign this Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the Agreement.
9. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the Agreement.
10. Either party's lack of enforcement of any provision in this Support and Maintenance

Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision and the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other.

11. A valid contract binding the parties hereto shall come into being only upon execution of this Support and Maintenance Agreement by a duly authorized agent, officer or representative of both parties.
12. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between Consultant and Organization. No change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.
13. The parties hereto agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders submitted by Organization.
14. The particular provisions of this Support and Maintenance Agreement shall be deemed confidential in nature and neither Organization nor Consultant shall divulge any of its provisions as set forth herein to any third party except as may be required by law.
15. (a) Termination of this Support and Maintenance Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
16. Article VIII, Remedies and Liability and Article IX, Indemnity of the Agreement are incorporated hereinafter as if stated verbatim.
17. Where remedies are expressly afforded by this Support and Maintenance Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of the Consultant arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.
18. This Support and Maintenance Agreement shall be governed by the laws of the State of Tennessee.
19. This Support and Maintenance Agreement may not be assigned by the Organization unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the Agreement.
20. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and enure to the benefit of the successors and permitted assigns of the parties.
21. Time shall be of the essence of this Support and Maintenance Agreement.
22. The invalidity or unenforceability of any provision or covenant contained in this Support

and Maintenance Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

23. The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Support and Maintenance Agreement and carry out its provisions.
24. This Support and Maintenance Agreement may be executed in counterparts (whether by facsimile signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

N. HARRIS COMPUTER CORPORATION

Per: _____

Name: Craig Ross

Title: Executive Vice President

SHELBY COUNTY, TENNESSEE

Per: _____

Name: A C Wharton, Jr.

Title: Mayor

Per: _____

Name: _____

Title: _____

EXHIBIT 1

Standard Support and Maintenance Services – Standard Guidelines

The purpose of this Exhibit I is to provide our customers with information on our standard coverage, the services which are included as part of your annual software support, a listing of call priorities, an outline of our escalation procedures and other important details.

Consultant reserves the right to make modifications to this document as required; provided, however, Consultant shall not reduce the scope of support provided hereunder without the prior consent of the Organization.

The services listed below are services that are included as part of your software support.

- 800 Toll Free Telephone support
- Software for Life
 - Guaranteed Support on your existing applications for life
 - Cost effective upgrade solutions
- Scheduled assistance for installations, upgrades & other special projects (there may be charges depending on the scope of work)
- Technical troubleshooting & issue resolution
- E-mail support call logging and notification
- Free eSupport access 24 x 7 with the following on-line benefits:
 - Log & close calls
 - View & update calls
 - Update contact information
 - Access published documentation
 - Access available downloads
 - Access Support knowledge base
 - Participate in Discussion Forums
 - Report on metrics
- Standard software releases and updates
 - Defect corrections (as warranted)
 - Planned enhancements
 - State and/or Federal mandated changes (charges may exist depending on scope)
 - Payroll regulated changes
 - Participation in BETA program
 - Release notes
- Limited training questions (15 minute guideline)
- Customer Care Program
 - Quarterly News Letter with support tips
 - Technical support bulletins
 - Communication on new products and services
 - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Outstanding Calls Report with conference call (as required)
- Ability to attend the annual customer conference (attendance fees apply)

HelpDesk Hours

Our standard hours of support are from 7:30 a.m. CST to 5:30 p.m. CST, Monday to Friday, excluding designated statutory holidays. Support is available from 5:30 p.m. CST through to 7:30 a.m. CST and is billable on an hourly basis. Support hours may vary by specific product line. Weekend assistance is available and must be scheduled in advance and in most cases is billable.

Response Times

Response times will vary and are dependant on the priority of the call. We do our best to ensure that we deal with incoming calls in the order that they are received, however calls will be escalated based on the urgency of the issue reported. Our response time guidelines are as follows:

Priority 1: 1 - 4 hours

Priority 2: 1 - 8 hours

Priority 3: 1 - 24 hours

Call Priorities

In an effort to assign our resources to incoming calls as effectively as possible, we have identified three types of call priorities, 1, 2 & 3. A Priority 1 call is deemed by our support staff to be an Urgent or High Priority call, Priority 2 is classified as a Medium Priority and Priority 3 is deemed to be a Low Priority. The criteria used to establish guidelines for these calls are as follows:

Priority 1 – High

- System Down (Software Application, Hardware, Operating System, Database)
- Inability to process payroll checks
- Inability to process accounts payable checks
- Inability to process bills
- Program errors without workarounds
- Incorrect calculation errors impacting a majority of records
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes
- Hand-held interface issues preventing billing

Priority 2 - Medium

- System errors that have workarounds
- Calculation errors impacting a minority of records
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)
- Security issues
- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

Priority 3 - Low

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Issues with workarounds for large majority of accounts
- Recommendations for enhancements on system changes
- Questions on documentation

Call Process

All issues or questions reported to support are tracked via a support call, our support analysts cannot provide assistance unless a support call is logged. Our current process for logging calls includes the following: eSupport (via website), email, phone and fax.

- Your call must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our support system or one of our support analysts will provide you with a call id to track your issue and your call will be logged into our support tracking database.
- Your call will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- As the support representative assigned to your call investigates your issue, you will be contacted and advised as to where the issue stands and the course of action that will be taken for resolution. If we require additional information, you will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with your call will be tracked against your all in our support database. At any time, if available to you, you may log onto our website to see the status of your call.
- Once your call has been resolved, you will receive an automated notification by email that your call has been closed. This email will contain the entire event history of the call from the time the call was created and leading up to the resolution of the call. You also have the option of viewing both your open and closed calls, if available to you, via our website.
- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be logged into our development tracking database and you will be provided with a separate id number to track the progress of the issue. At this time, your support call will be closed and replaced by the development id number. The development id number will remain open until your issue has been completely resolved. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue.
- Contact the support department at your convenience for a status update on your development issues, or log onto our website (if available to you) to view your issues on-line.

Escalation Process

Our escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate with the support department as follows:

- Level 1:** Contact the support representative working on your issue
- Level 2:** Contact the support supervisor or group lead
- Level 3:** Contact the director of support
- Level 4:** Contact the vice president of support or relevant Harris business unit
- Level 5:** Contact the CEO of Harris

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Day	Closed
Memorial Day	Closed
Independence Day	Closed
Labor Day	Closed
Veteran's Day	Closed
Thanksgiving	Closed
Day after Thanksgiving Day	Closed
Christmas Eve	Closed
Christmas Day	Closed
New Year's Eve	Early Closure

Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services.

- Extended telephone training
- Forms redesign or creation (includes Bill Prints, Notice Prints and Letters)
- Setup & changes to hand-held interface or creation of new interface
- Setup of new services or changes to services (PAP, ACH, etc)
- File imports/exports - Interfaces to other applications
- Refreshes, backups, restores, setting up test areas
- Setup of new printers, printer setup changes
- Custom modifications (reports, bills, forms, reversal of customizations)
- Setting up additional companies / agencies / tokens / general ledgers
- Data conversions / global modification to setup table data
- Database maintenance, repairs & optimization
- Extended Hardware & Operating System support
- Upgrades & support of third party software
- Installations / re-installations (workstations, servers)

Test Databases & Environments

We support customers in the maintenance of independent Test Environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the live environment. The creation of Test Databases & Environments is a billable service, quotations & incremental maintenance rates will be provided on request.

Connection Methods

To ensure we can effectively support our clients, we require that a communication link is established and maintained between our two sites. It is the client's responsibility to ensure the connection is valid at your location so that we can connect to your site and resolve any issues. Our supported methods of connection are: Direct internet, Virtual Private Network (VPN), Remote Access Server (RAS), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers).

Hardware and Third Party Support – if applicable

The purpose of this section is to provide our customers with information on our standard coverage and the services which are included as part of your annual hardware and third party software support (if applicable). This section serves as a guideline for the support department but is superseded by an existing third party or other agreement.

Standard Hardware and Third Party Software Support Services

- 800 telephone support – first line phone support for troubleshooting (note more complex issues will be escalated to the actual vendor of the products)
- “on call” after hours support (scheduled assistance for installations, upgrades and other special projects – there may be charges depending on the scope of work)
- remote connection support
- technical troubleshooting
- limited training questions (15 minute guideline)
- assistance with creation of backup scripts / backup recovery
- assistance with recovering data resulting from system crashes (charges may apply)
- recommendations on specific hardware requirements
- support provided for installed database issues (30 minute guideline)
- ODBC installation and connection to database assistance
- updating databases to support new versions of installed applications
- assistance with database installation, configuration and updating

The services listed below are services that are out of scope and are therefore considered billable – please note that we do not provide hardware support for any printers:

- on-site installation or upgrade of hardware and third party software
- extended telephone training (beyond 15 minutes)
- reconfiguration of hardware and file servers
- recovering data resulting from client error
- upgrading of hardware systems
- preventative maintenance monitoring or other services
- recommending or assisting with disaster recovery plans
- re-establishment of ODBC connection if connection was lost due to actions of customer
- ODBC connections to other third party products
- creation of custom reports
- report writer training, upgrades and installations (other than at time of initial purchase)

Schedule “E”

Scope of Work – to be attached if applicable

Not Applicable

Schedule "F"

Sample Form Change Order

Change Order

(a) Contact & General Information

Client _____ **Date** _____
Client _____
Contact _____ **Software** _____
Application _____
Client Email _____

(b) Description of Work

Attachments: ☐ _____

(c) Client Approval

_____ **\$0.00**
_____ **Chargeable Hours** _____ **Rate** _____ **Amount**

_____ **Non-Chargeable Hours** _____ **Total Hours**

_____ **Client Signature** _____ **Date**

_____ **Consultant Signature** _____ **Date**

Your signature serves as an acceptance of the "Amount" listed above as it relates to the description of work contained in this Change Order. Your signature also indicates you have reviewed and agree to the scope of work as detailed in any accompanying enclosures or attachments. This signed document indicates that you have provided all of the accurate information necessary to produce the work as stated in the above Change Order.

(d) Internal Use Only

Customer _____ **Application #** _____ **Originated by** _____ **PO#** 000000
_____ **#** _____ **0**

Schedule “G”

RFP – Consultant response to Organization

No RFP was issued. The current software of the organization is a much earlier version of the Consultant’s product. The Consultant presented a proposal for a conversion to the most recent version of the GEMS software.

The vendor prepared a written proposal of the capabilities of GEMS and demonstrated in an onsite presentation to specific employees and management the software and its functions. A copy of the Harris Computer Systems Standard Proposal To Shelby County (“Proposal”) is included herein and is part of this Agreement. Should provisions or terms of the body of this Agreement or other exhibits to this Agreement be contrary to or conflict with the terms of this Proposal, said terms and provisions shall control and be superior to the terms and provisions of the Proposal. The vendor was then employed to perform a discovery analysis as a separate engagement to review our customer requirements, expectations, defined modifications, and system processes.

The business analysts were brought on site by the Consultant and conducted a hands-on review of all of the functions of the finance, human resource/payroll and purchasing areas of the County. Each business analyst was an expert in their given area. They confirmed what needs and requirements the system could and could not meet for the County. They prepared several “Customer Request Forms” (CRF) of requirements that we were requesting the system to perform and some they were suggesting we implement. Each CRF was presented to the employees designated as the subject matter experts and accepted or rejected for implementation. The CRFs accepted will have to be written by their programmers to specifically meet our requested/required needs. Each accepted CRF has a warranty attached of 90 day or standard. A 90 day warranty means the modification is warranted for 90 days. After 90 days, support of the modification will be on a time and materials basis and the modification will not be supported with basecode releases. A standard warranty means the modification is fully warranted.

Schedule "H"

System Software

Feature	Description	QTY Users	Purchase Price	Annual Maintenance
Systems Software				
Database	Microsoft SQL Server 2005 Standard Edition, Per Processor License *	4	-	-
	GEMS Script Maintenance		-	4,437
Application Environment	Enterprise Application Bundled Runtime ****	40	26,372	3,372 **
	Enterprise Application Bundled Runtime Subscription for Upgrades	40	-	1,634
	Net Express Application Server Licenses	40	4,280	920
	Browser Interface	400	60,000	12,000
Print Engine Utility	Enterprise Output Manager ****	1	6,000	500 **
	Enterprise Output Manager Subscription for Upgrades	1	-	1,000 **
	Additional GEMS Support	1	-	500
MICR Check Printing	AcuPrint SecureCheck Advantage-Install	1	700	-
	AcuPrint SecureCheck Pro System	1	2,495	-
	AcuPrint Secure Software Printing	1	1,995	- ***
	AcuPrint Email Notification Module	1	350	-
	AcuPrint SecurePay ProPlus 6.0 (Positive Pay)	1	1,495	-
	AcuPrint SecurePay ProPlus Advantage Installation & Training	1	275	-
	AcuPrint SecurePay A-LINK (Automation for 2 printers)	1	395	-
	SecurePay ProPlus 6.0 - Maintenance 12 Months	1	-	275 **
	AcuPrint Signature (2), Logo (1) Digitizations	1	525	-
	GEMS Library of Forms	1	600	-
	SecureCheck Pro Maintenance Agreement-12 Months	1	-	995 **
	SUBTOTAL SYSTEMS SOFTWARE		\$ 105,482	\$ 25,633
NOTE Shelby requires secondary location for emergency back up Items highlighted in yellow do NOT require duplication Additional costs for secondary location				
			\$ 36,652	\$ 7,426
TOTAL SYSTEMS SOFTWARE			\$ 142,134	\$ 33,059

Note: Price adjustments are subject to final configuration and vendor pricing policies.

* In reference to the Employee Self Service Portal, additional SQL licenses may be required over and above the number being proposed depending upon existing license availability. SQL 2005 will be ordered with rights to install SQL 2000. NOTE: SHELBY COUNTY TO PURCHASE DIRECTLY.

** Third party vendor maintenance will be billed by the vendor. Price adjustments are subject to vendor pricing policies. Year 1 AcuPrint maintenance will be billed directly by GEMS.

*** AcuPrint Secure Software Printing includes printing to 2 PCL5E compatible printers on network.

**** Includes 1st Year Subscription Costs

Schedule "I"

Hardware

(to be purchased by Organization)

Feature	Description
GEMS Application Server	Tower
	Windows 2003 Server
Processors: 4	Quad Core 2.33/3.16 Ghz
Memory in GB	8.0
Storage: Hard Disk	146GB Total Usable (4 x 73GB 15K RPM) RAID 10
Storage: Removable	Slimline 48X CD-RW/DVD
Storage: Tape Drive	LTO drive (100/200GB)
Standard Peripherals	19" color monitor, keyboard, mouse
Other Components	Integrated Intel 100 Fast Ethernet Interface card
Intranet Server	Tower
	Windows 2003 Server
Processors: 2	Quad Core 2.33/3.16 Ghz
Memory in GB	2.0
Storage: Hard Disk	73GB Total Usable (2 x 73GB 15K RPM) RAID 1
Storage: Removable	Slimline 48X CD-RW/DVD
Standard Peripherals	19" color monitor, keyboard, mouse
Other Components	Integrated Intel 100 Fast Ethernet Interface card

Note: Price adjustments are subject to final configuration and vendor pricing policies.

NOTE: In reference to the Employee Self Service Portal (ESSP) and/or the Citizen Payment Portal, additional servers may be required over and above the one being proposed if they are currently not available at your site.

Schedule "J"

Software Not Selected

GEMS Application Software		License Fee
Financial Management System		
Budget Preparation	\$	25,300
Inventory Management (Purchasing Required)	\$	25,300
Work Order & Project Management	\$	40,480
Fleet Maintenance (Work Order Required)	\$	18,975
Centralized Cash Receipting	\$	34,500
Revenue Management System		
Revenue Base	\$	11,500
Reporting & Security		
Geobase Management		
Citizen Payment Portal (Revenue Base Required)	\$	46,000
Permits & Inspections (Revenue Base Required)	\$	27,830
Business Licensing (Revenue Base Required)	\$	25,300
Utility Management	\$	53,130
	\$	<u>308,315</u>

Notes:

- 1: If additional optional applications are chosen, increased project management services may be necessary.
- 2: Imaging Management System - Pricing based upon specific requirements.

Schedule “K”

Addendum

This Addendum (“Addendum”) is made and entered into by and between Consultant and Organization and hereby amends certain provisions of the Agreement.

Consultant and Organization agree to make the amendments to the Agreement described in this Addendum. Initially capitalized terms not otherwise defined in this Addendum shall have the meaning(s) set forth in the Agreement. Except as otherwise provided in this Addendum, all other provisions of the Agreement shall remain in full force and effect.

Schedule "L"

Modifications

This Commitment is made and entered into by and between consultant and Organization and hereby amends certain provisions of the Agreement.

Consultant and Organization agree to make the Commitments to the Agreement described below. Initially capitalized terms not otherwise defined in this Commitment shall have the meaning(s) set forth in the Agreement. Except as otherwise provided in this Commitment, all other provisions of the Agreement shall remain in full force and effect.

As a result of Phase I, Business Process Reviews, the following modifications have been indentified and included in this contract:

No.	Title	CRF Reference	Price	Hours	Pass/Defer	Share	Notes/Comments
General Ledger Process Exceptions - Required at Contract							
1	Division, Department and Section Segregation	244_#####_GLACC	3,360	24			Required
3	Page Break at Org or Fund Level	244_#####_ACCTHIST	1,750	12.5		1,750	Required
		244_#####_GLSUMMARY	1,400	10		1,400	Required
10	(Wildcard) Multiple Vendor Option/AP Encumbrance	244_#####_INVHD_POMNT	13,300	95			Required-Additional 70 hours to add multiple lines to POMNT
Purchasing Process Exceptions - Required at Contract							
1	E-Procurement GL Interface	244_#####_E_PROCURE	3,360	24			Required-Shelby to include as allowance and will contact us with details when they are ready
2	Change Order Approval Routing	244_#####_PO_Change_Order_Approval_Rout	7,000	50		7,000	Required
4A	Print EOC Vendor Number on Purchase Order	244_#####_WRTPOFORM CHG	3,500	25			Required-Items 4A, 4B and 7 are related
4B		244_#####_REQ_PO ENTRY	7,000	50			Required-Items 4A, 4B and 7 are related
5	Storing Purchase Orders in OnBase	244_#####_PO BATCHXDEPT	6,300	45			Required
7	EOC Vendor Tracking	244_#####_EOC_VENDR	5,600	40			Required-Items 4A, 4B and 7 are related
8	BIWKS - Commodity Code drives the Buyer	244_#####_BICXB	4,900	35			Required
HRMS (Payroll) Process Exceptions - Required at Contract							
1	Overtime Rates	Shelby Co Add LG-Shift to OT Rates				22,400	Required - FLSA requirement
5	Life Insurance over \$50,000	Shelby Co GTL Mods	16,800	120			Required
8	Deferred Compensation	Shelby Co Nationwide Def Comp Report-File	5,600	40		5,600	Required
12	Reporting Retirement Contributions	Shelby Co Pension Gold	15,680	112			Required-XML format NOT required
23	Budgeting by Position	Shelby Co PSTN4 Budgeting	71,680	512			Required
27	Insurance Type Search	Shelby Co INTYP Search by Date				4,200	Required
30	Salary Ranges for Jobs	Shelby Co JBDES Add Field for Level	1,400	10			Required
33	Flexible spending accounts	Need extract file	12,880	92			Required
35	Unemployment QTD wages	Need extract file				X	Required-Automatic update for compliance with Federal/State requirements
36	EEO reporting	Need to send EEO reports				X	Required-Automatic update for compliance with Federal/State requirements
Grand Total for all Modifications Required at Contract			181,510	1,296.50	-	42,350	

No.	Title	CRF Reference	Price	Hours	Pass/Defer	Share	Notes/Comments
General Ledger Process Exceptions - Passed/Deferred at Contract							
2	CNTRLS Program	244_####_GLDIFFEXTR		20	2,800		Not required - pass.
4	Wildcard Option in GL Report	244_####_GENLEDGER		30	4,200		Not required - pass.
5	1099S and 1099INT Reporting	244_####_1099INT		220	30,800		Not required at this time - pass. Items 5, 6 and 8 are related. Shelby will pursue 3rd party 1099 solution.
6	Court System Interface	244_####_1099CourtSystem_Interface		40	5,600		Not required at this time - pass. Items 5, 6 and 8 are related. Shelby will pursue 3rd party 1099 solution.
8	1099 Vendor Reporting	244_####_ADJUS		140	19,600		Not required at this time - pass. Items 5, 6 and 8 are related. Shelby will pursue 3rd party 1099 solution.
9	Accounts Payable/Vendor Activity	244_####_APACTIVITY		25	3,500		Need to see the output before final decision.
11	Risk Management Solution (New)				X		Not required at this time - pass. Shelby will pursue potential interface if API doesn't work.
Purchasing Process Exceptions - Passed/Deferred at Contract							
3	Provide Change History Inquiry for Purchase Orders	244_####_PO_Change_Order_History		90	12,600		Not required - pass.
HRMS (Payroll) Process Exceptions - Passed/Deferred at Contract							
2	AFLAC Report	Shelby Co AFLAC Report-File		80	11,200		Not required - pass.
3	Manual Checks	Shelby Co Demand Checks		285	39,900		Not required - pass.
4	Taxes and Taxable Wages	Shelby Co FICA Med Taxable Wages		45	6,300		Not required - pass.
6	OPTIONAL, not REGULAR	Shelby Co Life Insurance Mods		100	14,000		Not required - pass.
7		Shelby Co More Fields to PBNFT		314	43,960		Not required - pass.
9		Shelby Co New EARNREG Report		72	10,080		Not required - pass.
10	Pay Periods	Shelby Co New Leave Adj Screen		244	34,160		Not required - pass.
11	Shift Differential Pay	Shelby Co No Shift Diff		135	18,900		Not required - pass.
13		Shelby Co Personnel Listing Report		76	10,640		Not required - pass.
14		Shelby Co PREDIT Pretax Deductions		188	26,320		Not required - pass.
15	Pay Schedules and Salary Increases	Shelby Co RAISEEDIT Exclusion		65	9,100		Not required - pass.
16	Pay Schedules and Salary Increases	Shelby Co RAISEEDIT Over Max		92	12,880		Not required - pass.
17	Pay Schedules and Salary Increases	Shelby Co RAISEEDIT Multi Groups		56	7,840		Not required - pass.
18	Retirement Plan B	Shelby Co Ret Plan B 35 Years		24	3,360		Not required - pass.
19		Shelby Co Retiree Premium Report		92	12,880		Not required - pass.
20		Shelby Co Suffix to PRADD		56	7,840		Not required - pass.
21	Truncating Annual Leave Balances	Shelby Co LVBAEDIT by Anniv Date		108	15,120		Not required - pass.
22	Bonus Leave	Shelby Co Bonus Leave Report			X		Not required - pass.
24	Performance Evaluations	Shelby Co PEVAL No Inter-Eval Freq		64	8,960		Not required - pass.
25	Probation Periods by Position Type	Shelby Co ETRANEDIT-HRPTY Eval Freq		44	6,160		Not required - pass.
26	Connecting Insurance Benefits to Dependents	Shelby Co Connect EBNFT to DEPEND		48	6,720		Not required - pass.
28	Check Reconciliation	Shelby Co CKREC-RECONCILE Changes			X		Not required - pass.
29	Confidential Information	Shelby Co PSWDS Confidential Fields		298	41,720		Not required - pass.
31	Clear Screen on Add or Chg	Shelby Co Retain Screen on Add-Change		132	18,480		Not required - pass.
32		Shelby Co TN New Hire Report			X		Not required - pass.
34	Time sheets	Need to see what we have			X		Not required - pass.
37		Shelby Co Reissue NOD as Check			X		Not required - pass.
Grand Total for all Modifications Passed/Deferred at Contract			-	2,674	374,360	-	

Schedule “M”

Escrow Agreement



Harris Computer Systems

Escrow Services Agreement

SERVICES AGREEMENT by and between Harris Computer Systems ("Harris"), having offices at #400 – 1 Antares Dr. , Ottawa Ontario B.C. K2E 8C4 and _____ ("Customer"), having offices at _____, is made and entered into as of the _____ day of _____, 2005.

PREAMBLE

WHEREAS:

- a) Harris owns or has the right to license certain Software ("Programs"); and
- b) Harris provides software escrow services ("Escrow Services") to its licensees in addition to those specified in the license supplement ("License Supplement") attached for reference as Appendix "A" to the License Agreement entered into between the parties hereto, such License Agreement dated for reference the [day/month/year], and is willing to provide such services to Customer on the terms and conditions specified in this Agreement; and
- c) Customer has licensed the Software ("Programs") specified in the License Supplement; and
- d) The initial Support and Maintenance period specified in the License Supplement has not expired or the Customer has made timely renewal payments;

THEREFORE in consideration of the premises and of the mutual covenants herein set forth, the parties agree as follows:

PROGRAMS	ANNUAL FEES	UPDATE FEES
MS Govern	\$1500	\$500
TOTALS	\$1500	\$500

SECTION 1: HARRIS PROGRAMS

- 1.1 "Program" means the software application(s) set in the License Supplement or otherwise made available by Harris or use by the Licensee as a part of this Agreement.

SECTION 2: ESCROW SERVICES

- 2.1 Term: Escrow Services will commence on the date of execution of this Agreement and will continue as long as the Customer is covered by Support and Maintenance pursuant to the License Agreement and any Support and Maintenance Service Agreement entered into between the parties and so long as the Customer has paid the applicable Escrow Service Fees. Escrow Services will terminate automatically upon the termination of the License Agreement or of an applicable License Supplement, Service Agreement, or upon non-payment of Support and Maintenance fees or Escrow Services Fees.
- 2.2 Charges: The fee for the first delivery of the Escrow Materials will be the Annual Fee. Subsequently, the Annual Fee will be billed as a supplementary charge to the Support and Maintenance fees under the same payment terms. Should Customer request Escrow Materials outside the normal release update cycle, the Update Fee will apply.
- 2.3 Delivery of Escrow Materials: "Escrow Materials" is defined as a sealed package containing a copy of the Program's source code on Harris supported electronic medium in the format and system environment used by Harris and Customer in its own operation to generate object code, together with a copy of the existing systems documentation developed for the Programs and the specifications for the operating environment and

software tools required to make effective use of the source materials. Escrow Materials will be shipped within ten (10) days of the initial payment of the Annual Fees to Harris' then current Escrow Agent, DSI Technology Escrow Services, having an address at 2100 Norcross Parkway, Suite 150, Norcross, GA, 30071. Subsequently, provided Customer has maintained payment of the Support and Maintenance fees and Escrow Services Annual Fees, the existing Escrow Materials will be exchanged for a replacement set comprising the then-current source and documentation and shall again be placed with Harris' then current Escrow Agent, such exchange occurring as soon as practical following the shipment of a new release of the Programs.

- 2.4 Access to Escrow Materials: Escrow Materials shall remain in a sealed package and shall be held, in trust, by Harris' Escrow Agent. Customer shall be entitled to verify with the Escrow Agent that the Escrow Materials (namely the sealed package containing the then current source code) have been placed with Harris' Escrow Agent. However, Customer shall not be entitled to access the Escrow Materials unless and until one of the following events occur:
- a) Harris is unwilling or unable to complete modifications to the programs which are required to allow Customer to comply with regulatory or legal requirements which are beyond the control of Customer; or
 - b) Harris takes advantage of the insolvency laws of any jurisdiction; or
 - c) Harris makes an assignment in bankruptcy or is adjudicated as bankrupt pursuant to section 7 of the United States Code; or
 - d) Harris makes a general assignment for the benefit of its creditors; or
 - e) Harris has a receiver, administrator or manager of its property, assets or undertakings appointed in such circumstances as would adversely affect the continuing use by Customer of the Software specified in the License Supplement; or
 - f) Harris is ordered by any Court of competent jurisdiction to be wound up; or
 - g) Harris becomes insolvent; or
 - h) Harris ceases doing business as a going concern.
- 2.5 Warranties of Harris: Provided Customer complies with the terms of the License Agreement and all Supplements and Addendums thereto and pays the agreed Support and Maintenance fees, Harris will, to the extent that it is still supplying such services to other customers, warrant that the Escrow Materials and replacement Escrow Materials delivered under this Agreement will be complete, accurately reflect the most current version of the source code of the Programs used by Customer, incorporate all changes made to the Programs or the source code thereof from the previous time the Escrow Materials were delivered to Harris' Escrow Agent under this Agreement, and contain no passwords or other devices that would prevent or prohibit the use of the Escrow Materials at any time should an event in s.2(4) occur.
- 2.6 Harris' Intellectual Property: Customer acknowledges that the Escrow Materials are and shall remain solely Harris' property (tangible and intellectual). Customer furthermore acknowledges that any breach or violation of this Agreement would cause Harris irreparable harm and that legal remedies, in themselves, may not adequately remedy such breach or violation. Harris, therefore shall be entitled to pursue, in addition to any legal remedy available to it, all equitable remedies (including injunctive relief and specific performance). Customer hereby warrants that it shall not attempt to access, except pursuant to the provisions of this Agreement, the Escrow Materials and replacement Escrow Materials delivered under this Agreement to Harris' Escrow Agent. Even in the event of access to the Escrow Materials by Customer pursuant to s.2(4), Customer acknowledges that it shall only be entitled to use the source code and documentation in the same manner in which Customer is permitted to use the object code of the Programs as specified in the License, with the additional license to modify the source code and convert it to executable object code. In particular, without restricting the generality of the foregoing, the release, modification, enhancement, or alteration of the Escrow Materials does not alter Harris' complete and sole ownership of all property rights in the Programs and Customer shall sign all written instruments to this effect if required by Harris or an agent acting on behalf of Harris. Customer furthermore acknowledges that any resultant modification or enhancement to the Escrow Materials shall become Harris' intellectual property and Customer shall sign all written instruments to this effect.

SECTION 3: PAYMENT

- 3.1 Excepting the initial invoice that is due upon execution of this Agreement, all fees shall be paid within thirty (30) days after receipt of the invoice. Customer shall pay all applicable shipping charges and taxes, exclusive of Harris' income and corporate franchise taxes. If any invoice is not paid within thirty (30) days, Customer shall pay a late payment charge of 1% per month on the unpaid amount, together with the amount of the original invoice. Customer shall reimburse Harris for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Customer.

SECTION 4: TERMINATION AND DEFAULT

- 4.1 Termination: At Customer's option, this Agreement may be terminated by providing notice in writing to Harris at least thirty (30) days prior to an annual Escrow Services renewal date. Upon termination, Harris' Escrow Agent shall return all Escrow Materials to Harris and any and all rights enjoyed by Customer hereunder shall automatically and immediately terminate.
- 4.2 Remedy of Default: This Agreement may be terminated by either party if the other fails to perform or comply with any provision of this Agreement, provided that a party intending to terminate under this provision will provide written notice of the applicable default to the defaulting party, and termination based thereon will only be effected if the defaulting party fails to rectify the specified default within sixty (60) days after receipt of such notice. Upon the occurrence of an Event of Default by Harris and failure by Harris to remedy, if Customer elects not to

terminate this Agreement, then the Customer shall be entitled to have access to the Escrow Materials currently in Harris' Escrow Agent's possession and the Escrow Materials will, subject to the provisions of s. 2(6) hereof, be released from the escrow restrictions forthwith.

SECTION 5: GENERAL PROVISIONS

- 5.1 **Assignment:** Neither party hereto shall be entitled to assign that party's rights and obligations under this Agreement without the express written agreement of the other party, such agreement not to be unreasonably withheld.
- 5.2 **Severability:** Any provision of this Agreement which is prohibited by law or is unenforceable will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 5.3 **Entirement:** This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.
- 5.4 **Modification:** This Agreement may not be modified except in writing by an authorized signatory of each party.
- 5.5 **Non-Solicitation:** The parties agree that during the term of this Agreement, and for a period of two (2) years thereafter, they will not, without the express prior written consent, directly or indirectly, solicit any person for employment who is currently employed by the other party. In addition, any person who has been previously employed by either party, shall be prohibited from servicing or providing consultation within the scope of work contemplated by this Agreement for a minimum of two (2) year after their current employment.
- 5.6 **Marketing:** Customer agrees that Harris may publicly refer to Customer orally and in writing as a client of Harris. Any other reference to Customer by Harris requires the written consent of Customer.
- 5.7 **Notification:** All notices under this Agreement shall be in writing and delivered by overnight delivery service or certified mail, return receipt requested, to the address specified above. Either party may change its address by providing notice in accordance with this Section.
- 5.8 **Governing Law:** The Agreement shall be governed by and construed in accordance with the laws of the State of _____. This Agreement shall attach to the jurisdiction of a competent court within a mutually agreed upon county in the State of _____.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth above.

CUSTOMER

By: _____

Name Printed: _____

Title: _____

HARRIS COMPUTER SYSTEMS

By: _____

Name Printed: _____

Title: General Manager - MS Goven

Schedule “N”

Documentation and Training

Financial Management System

General Ledger Processing
General Ledger Set Up
Accounts Payable Processing
Accounts Payable Set Up
Accounts Receivable/Cash Receipts Processing
Accounts Receivable/Cash Receipts Set Up
Questica Budget
Purchasing Processing
Purchasing Set Up
Bid Administration
Fixed Assets Processing
Fixed Assets Set Up
CAFR Reporting

Human Resource Management System

Human Resources
Payroll Processing
Payroll Set Up
Employee Self Service Administration
Employee Self Service User

General

Introduction to Enterprise Application Runtime
Advanced Enterprise Application Runtime
Fiscal Focus Administration
Fiscal Focus User
GemStone Administration
GemStone User
Introduction to the GEMS Systems
QuickApplication Administration
QuickApplication User
Screen Designer
Security
SkyView
eForms Administration
eForms User

Schedule "O"

System Software

Feature	Description	QTY Users	Purchase Price	Annual Maintenance
Systems Software				
Database	Microsoft SQL Server 2005 Standard Edition, Per Processor License *	4	-	-
	GEMS Script Maintenance		-	4,437
Application Environment	Enterprise Application Bundled Runtime ****	40	26,372	3,372 **
	Enterprise Application Bundled Runtime Subscription for Upgrades	40	-	1,634
	Net Express Application Server Licenses	40	4,280	920
	Browser Interface	400	60,000	12,000
Print Engine Utility	Enterprise Output Manager ****	1	6,000	500 **
	Enterprise Output Manager Subscription for Upgrades	1	-	1,000 **
	Additional GEMS Support	1	-	500
MICR Check Printing	AcuPrint SecureCheck Advantage-Install	1	700	-
	AcuPrint SecureCheck Pro System	1	2,495	-
	AcuPrint Secure Software Printing	1	1,995	- ***
	AcuPrint Email Notification Module	1	350	-
	AcuPrint SecurePay ProPlus 6.0 (Positive Pay)	1	1,495	-
	AcuPrint SecurePay ProPlus Advantage Installation & Training	1	275	-
	AcuPrint SecurePay A-LINK (Automation for 2 printers)	1	395	-
	SecurePay ProPlus 6.0 - Maintenance 12 Months	1	-	275 **
	AcuPrint Signature (2), Logo (1) Digitizations	1	525	-
	GEMS Library of Forms	1	600	-
	SecureCheck Pro Maintenance Agreement-12 Months	1	-	995 **
SUBTOTAL SYSTEMS SOFTWARE			\$ 105,482	\$ 25,633
NOTE Shelby requires secondary location for emergency back up				
Additional costs for secondary location (AcuPrint not included)			\$ 36,652	\$ 7,426
TOTAL SYSTEMS SOFTWARE			\$ 142,134	\$ 33,059

Note: Price adjustments are subject to final configuration and vendor pricing policies.

* In reference to the Employee Self Service Portal, additional SQL licenses may be required over and above the number being proposed depending upon existing license availability. SQL 2005 will be ordered with rights to install SQL 2000. **NOTE: SHELBY COUNTY TO PURCHASE DIRECTLY.**

** Third party vendor maintenance will be billed by the vendor. Price adjustments are subject to vendor pricing policies. Year 1 AcuPrint maintenance will be billed directly by GEMS.

*** AcuPrint Secure Software Printing includes printing to 2 PCL5E compatible printers on network.

**** Includes 1st Year Subscription Costs